

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: *In the Matter of Voicestream Wireless Corporation Petition for Waiver of Section 64.402 of the Commission's Rules*, WT Docket No. 01-333

We cannot underestimate the importance of public safety and national security operations. Emergency response service providers at the federal, state and local levels require instant, reliable, unfettered mobile voice access in times of crises. Priority Access Service will be critical in helping to meet the country's communications needs related to national security and emergency preparedness. It will further the Commission's statutory mandate to "make available ... a rapid, efficient Nationwide ... communication service ... for the purpose of national defense, [and] for the purpose of promoting safety of life and property[.]"¹ PAS also demonstrates how technological advances are allowing increasingly efficient use of spectrum. During crisis situations, a higher valued use of the spectrum prevails, without having to dedicate those frequencies for emergency services all of the time.

Although I approve this item, one aspect of the PAS rules does give me pause. Activation of PAS may cause a decrease in the availability of service for "non-priority" customers during times when they may need or want their service the most. While the PAS rules do not require carriers to notify their customers when they have entered into such agreements, this Order emphasizes that carriers and consumers are best served by complete disclosure of all relevant terms and conditions. I also encourage PAS carriers to inform their customers when they have entered into such arrangements. It is good business practice to provide such notification to customers. Indeed, responsible carriers typically inform their customers of such changes to their service, and clearly indicate the limitations of any service they offer.

Moreover, while this Order exempts carriers from the prohibition against unjustly or unreasonably providing preferences to any particular class of persons, it does nothing with respect to the prohibition against unjust or unreasonable practices. Thus, customers will still have recourse under the section of the Communications Act prohibiting unjust or unreasonable practices. Customers may also have private contractual remedies, as well as state remedies. Accordingly, I feel comfortable supporting this limited waiver of the PAS rules.

¹ 47 U.S.C. § 151.